UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES ATLANTA BRANCH OFFICE

UNITED PARCEL SERVICE, INC.

and

TEAMSTERS LOCAL UNION, No. 480 affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS

CASES 26-CA-072915 26-CA-076655 26-CA-078241

Michael W. Jeannette, Esq., for the Acting General Counsel. Aron Z. Karabel, Esq. and Charles H. Williamson, Esq., of Nashville, Tennessee, for the Respondent. Samuel Morris, Esq., for the Charging Party.

Supplemental Clarification of Decision

On March 4, 2013, I issued a decision in this matter. This decision addressed the allegations contained in 533 paragraphs of a 570-page complaint. Specifically, the Acting General Counsel alleged in these 533 substantive paragraphs that United Parcel Service, Inc. (Respondent) had either unlawfully failed or refused to provide necessary and relevant information to Teamsters Local Union, No. 480 affiliated with International Brotherhood of Teamsters (Charging Party) or that Respondent unlawfully delayed in providing necessary and relevant information to the Charging Party. On April 5, 2013, counsel for the Acting General Counsel filed a motion with the National Labor Relations Board (Board) to rescind the order transferring this proceeding to the Board. The Acting General Counsel requested an opportunity to file a motion requesting clarification of specific portions of my March 4, 2013 decision. On May 10, 2013, the Board granted the Acting General Counsel's motion.

On June 6, 2013, counsel for the Acting General Counsel filed Counsel for the Acting General Counsel's Motion Requesting Administrative Law Judge to Clarify Decision and Issue Order Transferring Proceeding to the National Labor Relations Board. On June 24, 2013, Respondent filed United Parcel Service, Inc's Response to Motion Requesting Administrative Law Judge to Clarify Decision and Issue Order Transferring Proceeding to the National Labor Relations Board. On June 25, 2013, the Charging Party filed Response to Acting General Counsel's Motion for Clarification.

Inasmuch as this matter is now before me by virtue of the Board's order of May 10, 2013, I issue the following Supplemental Clarification of Decision that addresses the Acting General Counsel's motion and the responses filed by the Respondent and the Charging Party.

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Α. The Portions of my Decision Addressed in the Acting General Counsel's Motion

1. Complaint paragraph 434

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The Acting General Counsel submits that although I included a finding that Respondent delayed in providing certain information as alleged in complaint paragraph 434. I inadvertently failed to rule on a failure to provide information allegation that was also contained in complaint paragraph 434. I disagree in part with counsel for the Acting General Counsel's assertion. In actuality, I did not find that Respondent unreasonably delayed in providing certain requested information as alleged in complaint paragraph 434¹. Counsel is correct, however, in his assertion that I inadvertently failed to rule on whether Respondent failed and refused to provide all of the requested information as alleged in complaint 434. My decision is now clarified to reflect that I find that Respondent has failed and refused to provide all of the requested information as alleged in complaint paragraph 434. No other violation is found with respect to complaint paragraph 434.

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2. Clarification of asserted contradictory rulings

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Counsel for the Acting General Counsel also asserts that there are contradictory rulings in my decision with respect to ten complaint paragraphs and counsel asks that I clarify my findings and resolve any existing contradictions with respect to the allegations contained in these complaint paragraphs.

a.

Complaint paragraphs 288 and 289

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Page 24 of my decision outlines my findings with respect to the allegations contained in complaint paragraphs 288 and 289. For the reasons set forth in my decision, I do not find that Respondent violated the Act as alleged in these complaint paragraphs. On page 9 of my decision, I inadvertently included complaint paragraphs 288 and 289 in a listing of paragraphs for which I otherwise found merit. Accordingly, any references to complaint paragraphs 288 and 289 on page 9 are hereby stricken and I find that the allegations contained in these paragraphs are without merit and should be dismissed.

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Complaint paragraphs 296, 297, and 298 b.

Pages 24 and 25 of my decision outline my findings with respect to the allegations contained in complaint paragraphs 296, 297, and 298. For the reasons set forth in my decision, I do not find that Respondent violated the act as alleged in these complaint paragraphs. On page 9 of my decision, I inadvertently included complaint paragraphs 296, 297, and 298 in a

In the June 24, 2013 Response, Respondent additionally asserts that counsel for the Acting General Counsel has erroneously mischaracterized my ruling with respect to complaint paragraph 434.

listing of paragraphs for which I otherwise found merit. Accordingly, any references to complaint paragraphs 296, 297, and 298 on page 9 of my decision are hereby stricken and I find that the allegations contained in these paragraphs are without merit and should be dismissed.

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c. Complaint paragraphs 318, 319, 320, and 321

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Page 25 of my decision outlines my findings with respect to the allegations contained in complaint paragraphs 318, 319, 320, and 321. For the reasons set forth in my decision, I do not find that Respondent violated the Act as alleged in these complaint paragraphs. On page 9 of my decision, I inadvertently included complaint paragraphs 318, 319, 320, and 321 in a listing of paragraphs for which I otherwise found merit. Accordingly, any references to complaint paragraphs 318, 319, 320, and 321 on page 9 of my decision are hereby stricken and I find that the allegations contained in these paragraphs are without merit and should be dismissed.

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d. Complaint paragraph 354

Pages 29 and 30 of my decision outline my findings with respect to the allegations contained in complaint paragraph 354. For the reasons set forth in my decision, I do not find that Respondent violated the Act as alleged in this complaint paragraph. On page 9 of my decision, I inadvertently included complaint paragraph 354 in a listing of paragraphs for which I otherwise found merit. Accordingly, any references to complaint paragraph 354 on page 9 of my decision are hereby stricken and I find that the allegations contained in this paragraph are without merit and should be dismissed.

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B. The Portions of My Decision Addressed in Respondent's June 24, 2013 Response

1. Complaint paragraph 14

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Respondent asserts that I erroneously ruled that it failed to provide the requested information as alleged in paragraph 14 of the complaint. Respondent asserts that this ruling is in error "because the record evidence established that the information requested did not exist." Respondent contends therefore that Respondent could not have failed to provide the Union with information in its possession and Respondent requests further consideration on this issue.

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In his motion to the Board dated April 5, 2013, counsel for the Acting General Counsel requested that the Board rescind its Order Transferring Proceedings to the National Labor Relations Board in order that he might file a motion with me requesting that my decision be clarified regarding my findings concerning 11 paragraphs alleging unlawful conduct in the 570-page complaint. Specifically, counsel for the Acting General Counsel submits that there were conflicting findings with respect to these specific complaint paragraphs and counsel has requested a clarification to resolve any inadvertent ambiguity. Counsel for the Acting General Counsel did not request the Board to rescind its Order Transferring Proceedings in order that he could supplement his argument concerning the record evidence. In its Order of May 10, 2013, the Board made no provision for the Acting General Counsel or any party to supplement its argument concerning the record evidence. If Respondent wishes to present any arguments

concerning the record evidence or to argue the validity or invalidity of my findings, these arguments may be made to the Board by filings exceptions pursuant to Section 102.46 of the Board's Rules and Regulations. Accordingly, Respondent's motion requesting further consideration with respect to complaint paragraph 14 is denied.

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2. Complaint paragraph 15

Respondent asserts that on page 7 of my decision, I inadvertently found that Respondent unlawfully failed to provide information that was requested by the Union on June 13, 2011. Respondent is correct that complaint paragraph 15 alleges only that Respondent unreasonably delayed in providing information that was requested by the Union on June 13, 2011. Accordingly, any reference to complaint paragraph 15 on page 7 of my decision is hereby stricken and I make no finding that Respondent failed and refused to provide the information referenced specifically in complaint paragraph 15.

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3. Complaint paragraph 83

Respondent asserts that there is a pleading error in complaint paragraph 83. Respondent asserts in its Response that the Acting General Counsel alleged in paragraph 83(f) that Respondent unreasonably delayed in providing payroll histories for employee Williams for the period 1/4/2010 as stated in paragraph 83(a). Respondent submits, however, that the Acting General Counsel did not allege in paragraph 83(a) that the Charging Party requested any information for Williams. Respondent is incorrect as to the specified time period for the alleged delay in providing information. Paragraph 83(f) actually alleges that Respondent unreasonably delayed in furnishing the Charging Party with requested information concerning Williams for the period from January 18, 2010 to February 29, 2012. Respondent is correct, however, with respect to the error in the underlying pleading as paragraph 83(a) does not reference that any initial request for information was made by the Charging Party for Williams on January 18, 2010. Accordingly, complaint paragraph 83 was inadvertently listed on page 10 of the decision as a meritorious allegation. Therefore, any reference to complaint paragraph 83 on page 10 of the decision is hereby stricken.

4. Complaint paragraph 215

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Respondent asserts that although I found that Respondent failed to provide the requested information as alleged in paragraph 215, the Acting General Counsel only alleged that Respondent unreasonably delayed in furnish the requested information. Respondent is correct in its assertion that complaint paragraph 215 was inadvertently included on page 7 of my decision. Accordingly, any reference to complaint paragraph 215 on page 7 of my decision is hereby stricken and I make no finding that Respondent failed or refused to provide the requested information referenced in complaint paragraph 215.

5. Complaint paragraph 353

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Page 30 of my decision outlines my findings with respect to the allegations contained in complaint paragraph 353. For the reasons set forth in my decision, I do not find that

JD(ATL)-05-13

Respondent violated the Act as alleged in this paragraph. On page 8 of my decision, I inadvertently included complaint paragraph 353 in a listing of paragraphs for which I otherwise found merit. Accordingly, any references to complaint paragraph 353 on page 8 of my decision are hereby stricken and I find that the allegations contained in this paragraph are without merit and should be dismissed.

C. The Charging Party's Response to the Acting General Counsel's Motion

In his response filed on June 25, 2013, counsel for the Charging Party concurs with the Acting General Counsel that clarification of the decision is necessary and appropriate for all decision sections addressed in the Acting General Counsel's June 6, 2013 motion.

CONCLUSIONS AND ORDER

Inasmuch as the parties have now had the opportunity to request clarification for any and all findings in my March 4, 2013 decision, I hereby issue this clarification addressing those issues raised by the parties and discussed herein. No further time will be granted to any party for additional requests for reconsideration. No further time will be granted to any party for additional comment or response to any other party's responses. Pursuant to the Board's Order of May 10, 2013, these matters of inquiry have been addressed and clarified and this Supplemental Clarification of Decision should be attached to the original decision that issued in this matter on March 4, 2013. I request that the Board accept this case for further processing in accordance with Sections 102.45 and 102.46 of the Board's Rules and Regulations.

Dated, Washington, D.C. July 2, 2013

Margaret G. Brakebusch
Administrative Law Judge

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES ATLANTA BRANCH OFFICE

UNITED PARCEL SERVICE, INC.

and

CASES 26-CA-72915 26-CA-76655 26-CA-78241

TEAMSTERS LOCAL UNION, No. 480 affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Michael W. Jeannette, Esq., for the Acting
General Counsel.

William T. Fiala, Esq. and Charles H. Williamson,
Esq., of Nashville, Tennessee, for the
Respondent.

Samuel Morris, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARGARET G. BRAKEBUSCH, Administrative Law Judge. This case was tried in Nashville, Tennessee, on August 28, 29, and 30, 2012. Teamsters Local Union No. 480, affiliated with the International Brotherhood of Teamsters (Union) filed the charges in 26-CA-72915, 26-CA-76655, and 26-CA-7824, respectively, on January 23, March 15, and April 6, 2012. The Acting² General Counsel issued the 570-page consolidated complaint on June 28, 2012. The Acting Regional Director thereafter issued an amendment to the complaint on August 15, 2012. At the opening of the hearing in this matter, the complaint was further amended in follow up to counsel for the Acting General Counsel's notice of intent to amend the consolidated complaint that was filed on August 22, 2012.

The consolidated complaint alleges that during 2008³, 2009, 2010, 2011, and 2012, the Union initiated information requests relating to 558 grievances in multiple requests and that

For purposes of brevity, the Acting General Counsel is referenced herein as General Counsel.

Only one complaint paragraph relates to an information request in 2008.

United Parcel Service, Inc. (Respondent) has failed and refused to provide the requested information or has delayed in furnishing the requested information. The allegations are included in 533 separate complaint paragraphs. In its answer, Respondent denies that it failed and refused to provide the information. In its affirmative defenses, Respondent further asserts that some or all of the information requested by the Union is not within Respondent's possession or control and also that Respondent has provided the Union with all requested information in its possession to which the Union is legally entitled. Respondent additionally asserts that any requested information that it has not provided to the Union is not necessary for, or relevant to, the performance of its duties as collective-bargaining representative for the represented employees. Furthermore, Respondent defends its actions asserting that the Union's requests were overly broad, duplicative, and lacking sufficient specificity to allow Respondent to identify and to provide the information. The Respondent additionally asserts that the Union's requests were submitted in bad faith and unduly burdensome. Finally, Respondent maintains that any information provided was delivered in a reasonable time frame that did not prejudice the Union in the performance of its duties as collective-bargaining representative and delivered in compliance with the parties' long-standing practice.

On the entire record, including my observations of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Union, and the Respondent, I make the following:

FINDINGS OF FACT

Respondent, a Delaware corporation with an office and place of business in Nashville,
Tennessee, transports packages and freight throughout the United States and the world.
During the 12-month period ending May 31, 2012, Respondent derived gross revenues in excess of \$50,000 for the transportation of packages and freight from the State of Tennessee directly to points outside the State of Tennessee. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2),(6), and (7) of the Act. I further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

I. ALLEGED UNFAIR LABOR PRACTICES

35 A. Background

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The underlying facts of his case involve the Respondent's operation in Whites Creek Package Center in Nashville, Tennessee. The Whites Creek facility is the largest package hub operation for the Respondent in the Nashville area with approximately 1650 employees. Since at least 1979, the International Union, through this local and other locals, has been the exclusive collective-bargaining representative of certain bargaining unit employees at Respondent's facility. The current collective-bargaining agreement became effective on December 19, 2007, and continues in effect through July 31, 2013.

Len Hughes is employed by Respondent and is on a leave of absence serving as the current business representative for the Union. There are approximately 32 union stewards at

the Whites Creek facility. Matthew Webb has been employed with Respondent since 1994. He became Respondent's Tennessee District Labor Relations manager in 2006 and in 2010 he became the Mid-South District Labor Relations manager. Although Webb's staff and responsibilities increased, his duties in labor relations management have included dealing with the Union's requests for information and grievances.

B. The Grievance Process

Article 51 of the Southern Regional Supplemental Agreement between Respondent and the Southern Area Teamsters contains the negotiated grievance process that covers the Whites Creek Package Center. The article outlines each step of the grievance process and specifies the time period for the completion of each step of the grievance procedure. Within 5 working days of an alleged contract violation, a grievance must be filed. A grievance filed beyond the 5-day period is untimely under the provisions of the collective bargaining agreement (CBA). Once a grievance is filed, a steward has a 48-hour window to resolve the grievance matter with the appropriate supervisor. If the matter cannot be settled at this first step, the grievance will be turned over to the Local Union. The second step of the process allows a 15-day period for management and the Local Union to resolve the issue. If the parties cannot do so within this 15-day period, the Union has the option of taking the matter to the Southern Region Area Parcel Grievance Committee (SRAPGC) for a hearing. The collective-bargaining agreement contains no limitations or restrictions concerning the time when the Union can request information related to a grievance. Article 47 of the collective-bargaining agreement provides:

The Employer shall, upon written request, provide the Local Union or the Steward designated by the Local Union, with documents/information that is reasonably related (based on NLRA standards) to the pending grievance.

C. The Global Agreement

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Webb testified that between 2007 and the time of the hearing, the Union has made more than 1300 requests for information from Respondent. In June 2010, the parties entered into an informal agreement to settle prior Board charges. The agreement, referred to as the Global Agreement, dealt in part with the issue of the Union's information requests to Respondent. The agreement also provided for setting up a procedure for employees in the full-time shifter position to be given the opportunity to work overtime instead of less senior and lesser paid employees from other classifications. Shifter employees move trailers from one location to another within the confines of the facility. General Counsel asserts that the overwhelming majority of information requests involved in this case relate to the issue of overtime denial for shifter employees. In June 2010, and after the settlement, Webb designated a management employee to devote all of her time to collecting information for the Union's information requests.

D. The Scope of the Complaint Allegations

The hearing in this matter involves the litigation of three unfair labor practice charges filed by the Union in January, March, and April 2012. The 570-page complaint contains 533⁴ paragraphs alleging that the Union requested information from Respondent and that the Respondent either failed to provide all of the information requested and/or delayed in providing the requested information. Almost every complaint paragraph relates to a specific grievance that is alleged to be in issue and identifies the information requested as well as the dates and means by which the Union requested information. Every complaint paragraph lists multiple dates for information requests. The extent and the significance of these multiple requests are further discussed in this decision.

General Counsel submits that 489 of the grievances relate in some way to issues involving the shifter classification. General Counsel also asserts that the complaint involves 13 grievances concerning discipline, 14 grievances concerning supervisors performing bargaining unit work, 15 grievances concerning job bidding and extra work issues, and 15 grievances concerning union duty issues. There are four grievances that concern subcontracting, pay related issues, or safety issues.

E. Prevailing Legal Authority

1. Failure to provide information

Pursuant to Section 8(a)(5) of the Act, an employer, upon request, has a duty to furnish its employees' bargaining representative with information that is relevant and necessary to the performance of its statutory duties. *Pulaski Construction Co.*, 345 NLRB 931, 935 (2005); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This duty includes providing information relevant to contract administration including the processing of grievances. *Allison Corp.*, 330 NLRB 1363, 1367 (2000); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). The Board has long held that requested information necessary to decide whether to proceed with a grievance or arbitration must be provided by an employer. *NLRB v. Acme Industrial Co.*, supra at 437-438. *American National Can Co.*, 293 NLRB 901 (1989); *United Technologies Corp.*, 274 NLRB 504 (1985); *Eazor Exprees*, 271 NLRB 495 (1984). In fact, an employer has an obligation to furnish the bargaining representative the requested information if there is merely a probability that such information is relevant and will be of use to the union in fulfilling its statutory duties and responsibility as the employees' exclusive bargaining representative. *Bentley-Jost Electric Corp.*, 283 NLRB 564, 567 (1987).

In determining the relevancy of the requested information, the Board uses a liberal discovery-type standard. Information concerning terms and conditions of employment of bargaining unit employees represented by the union is presumptively relevant. Ibid; *W L Molding Co.*, 272 NLRB 1239 (1984). Citing its decision in *Wisconsin Bell, Inc.*, 346 NLRB 62, 64 (2005), the Board explained in *Dodger Theatricals Holdings, Inc.*, 347 NLRB 953, 967 (2006), that a union's burden is not an exceptionally heavy burden in showing relevancy. The

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General Counsel withdrew complaint par. 357 at the beginning of the hearing.

test of the union's need for information is simply a showing that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities. *Acme Industrial Co.*, above at 437. In fact, the union need not demonstrate that the information sought is certainly relevant or clearly dispositive of the basic issues between the parties. *Westinghouse Electric Corp.*, 239 NLRB 106, 107 (1978). The requested information needs only to have some bearing on the issues between the parties. *W L Molding Co.*, above at 1239. The Board, in determining that information is producible, does not pass on the merits of the underlying grievance; and the union is not required to demonstrate that the information sought is accurate, nonhearsay, or even ultimately reliable. Ibid.

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When the information is presumptively relevant, the employer has the burden of rebutting the presumption by proving that it is either not relevant or that it cannot, in good faith, supply the information. *Coca Cola Bottling Co.*, 311 NLRB 424, 425 (1993). An employer is not empowered to make a unilateral determination that presumptively or otherwise demonstrably relevant information sought by the union is unnecessary or irrelevant to the performance of the union's statutory duties. The Board has rejected this kind of argument in finding that an employer's claim that the requested information appears unnecessary is not an adequate basis for refusal. *Amphlett Printing Co.*, 237 NLRB 955, 956 (1978). Additionally, an employer may not simply refuse to comply with a request it considers overly broad and/or onerous. *Keauhou Beach Hotel*, 298 NLRB 702 (1990).

2. Delay in producing requested information

The duty of the Respondent to furnish information relevant to and necessary for the performance of the Union's statutory duty requires the Respondent to do so in a timely manner. An employer's "unreasonable" delay in furnishing requested information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2001). See also the Board's holdings in *Britt Metal Processing, Inc.*, 322 NLRB 421, 425 (1996), affd. mem. 134 F.3d 385 (11th Cir. 1997), and *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992). The Board evaluates the reasonableness of an employer's delay in supplying information based on the complexity and extent of the information sought, its availability, and the difficulty in retrieving the information. *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enfd. in part and remanded 394 F.3d 233 (4th Cir. 2005); *Samaritan Medical Center*, 319 NLRB 392, 398 (1995).

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II. FINDINGS AND CONCLUSIONS

A. Overview of Findings

As referenced above, the outstanding complaint contains a multitude of information requests over a 3-year period. Each complaint paragraph contains a listing of multiple requests for the same information for separate and individual grievances. Overall, almost every complaint paragraph reflects no less than three separate requests and some complaint paragraphs reflect as many as five or six information requests for a single grievance. These requests primarily cover a period of time from April 7, 2009, through April 24, 2012. Only one request for information in issue occurred in 2008. Each request seeks the production of

multiple categories of documents. In analyzing each complaint allegation and each request included therein, I have determined that Respondent unlawfully failed to provide requested information as alleged in certain complaint paragraphs and I have also found that Respondent unlawfully delayed in providing the requested information as alleged in specific complaint paragraphs. Additionally, and for the reasons explained below, I have also found that Respondent did not violate the Act with respect to other complaint allegations. My findings and conclusions are discussed below.

B. Respondent's Unlawful Failure to Provide Information

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Each complaint paragraph includes multiple dates when the Union requested the same information relating to a single grievance. Each information request seeks multiple documents involving various employees within specified, as well as, unspecified time periods. Each complaint paragraph includes the initial date when specific information was requested, as well as the subsequent dates when this same information request was duplicated. Based on the entire record, I find that Respondent has unlawfully failed to provide information to the Union for requests made on the following dates:

2008 and 2009 Requests

Date of Request	Number ⁵ of Requests for Date	Complaint paragraph(s)
7-14-2008	1	481
6-5-09	8	290-294, 533-535
9-2-09	4	495, 530-532
4-7-09	1	284
8-26-09	7	495-498, 530-532
11-16-09	50	95-108, 120, 125, 127, 483-493,
		499-502, 504-521
12-10-09	1	483

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2010 Requests

Date of Request	Number ⁶ of Requests for Date	Complaint paragraph(s)
1-18-10	16	70-75, 82, 83, 134, 141, 142,
		152-155, 163
1-22-10	1	497
2-22-10	32	80, 119, 121-124, 128-133, 135-
		137, 143-149, 151, 156, 158,
		159, 522-524, 526, 528, 529
3-4-10	6	81, 126, 150, 157, 182, 183
3-30-10	20	76-79, 84-86, 138, 160, 162,
		167, 173-177, 192, 194, 196-197
4-22-10	54	87-91, 139, 140, 161, 168-172,
		178-181, 184-191, 193, 195,
		198-214, 217-226

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This is the total number of information requests that the Union made on this date.

This is the total number of information requests that the Union made on this date.

6-1-10	16	244-248, 250, 252-257, 259,
		260, 262, 525
6-29-10	43	109, 111-118, 164-166, 215,
		216, 227-240, 249, 251, 258,
		261, 263-272, 494
$7-26-10^7$	12	241-243, 527
8-4-10	3	92-94
10-18-10 ⁸	1	305
11-11-10	1	295
12-14-10	17	280, 282, 299, 300, 303, 306-317

2011 Requests

Date of Request	Number ⁹ of Requests on Date	Complaint paragraph(s)
2-24-11	1	473
2-27-11	1	473
3-30-11	4	324-327
4-5-11	5	328-330, 332, 333
5-16-11	2	336, 537
5-17-11	1	338
6-6-11	1	12
6-7-11 ¹⁰	1	12
6-13-11	15	15-28, 341
8-1-11	3	281, 323, 355
8-5-11	3	12, 30, 356
8-9-11	1	503
8-12-11	9	31-33, 35-38, 281, 323
8-18-11	4	13, 281, 323, 503
8-25-11	1	39
8-26-11	3	40-42
8-29-11	1	14
8-31-11	2	283
9-2-11	1	345
9-5-11	3	346-48
9-8-11	1	12
9-9-11	1	14
9-12-11	1	503
9-14-11	1	345
9-15-11	2	331, 344
9-16-11	6	43, 349-350, 358-360
9-20-11	2	481, 482

On August 9, 2010, Respondent provided five of the six requested categories of information.

On November 5, 2010, Respondent provided five of the six requested categories of information.

This is the total number of information requests that the Union made on his date.

On June 7, 2011, the Union duplicated its information request from the previous day.

9-22-11	1	281
9-25-11	91	76, 77
10-7-11	6	366
11-7-11	13	58
11-18-11	8	69
12-1-11	6	351, 375, 421, 422, 423, 424
12-2-11	2	453, 454
12-5-11	6	352, 452, 455
12-14-11	1	352

2012 Requests

Date of Request	Number ¹¹ of Requests on Date	Complaint paragraph(s)
1-7-12	4	435-437, 456
1-8-12	1	536
1-15-12	5	304, 456, 536, 537, 538
1-20-12	36	365, 368, 370-373, 379-398,
		401, 427-433, 457, 458
1-21-12	4	304, 378, 536, 537
1-28-12	36	365, 368, 370-373, 378-385,
		387-398, 403, 427-433, 457, 458
1-29-12	2	450, 451
2-2-12	3	378, 403, 536
2-4-12	6	347, 349, 405, 406, 448, 482
2-7-12	1	437
2-9-12	1	462
2-10-12	35	365, 370-372, 379-381, 384-393,
		395, 396, 347, 368, 398, 427-
		429, 431-433, 450, 451, 457,
		458, 537-539
2-13-12	3	415, 440, 441
2-17-12	1	540
2-20-12	3	414, 417, 419
2-24-12	4	416, 420, 540, 541, 473
2-27-12	23	407-417, 419-420, 438-441, 459-
		462, 465, 466
3-4-12	30	347, 407-417, 419, 420, 438-
		440, 459-462, 465, 466, 473,
		481, 503, 539-542
3-5-12	1	281
3-7-12	3	353
3-8-12	3	444, 468, 541
3-9-12	4	474
3-11-12	27	286-289, 296-298, 301, 302,

¹¹ This number is the total number of requests that the Union made on this date.

		318, 319, 321, 322, 324-330,
	_	332-333, 336-338
3-12-12	5	320, 335
3-14-12	28	286-289, 296-298, 301, 302,
		318, 320-330, 332, 333, 335-339
3-15-12	2	319, 334
3-16-12	6	283, 346, 348, 478, 347, 441
3-20-12	6	354, 418, 442, 443, 464, 543
3-21-12	6	283, 346, 348, 403, 428, 542
3-23-12	7	354, 418, 442, 443, 464, 542,
		543
3-27-12	13	283, 286, 288, 289, 296-298,
		301, 318, 319, 321, 348, 440
3-29-12	25	284, 285, 290-294, 354, 377,
		400, 402, 425, 426, 463, 476-
		479, 497, 498, 533-535, 543
4-4-12	26	284, 285, 290-294, 376, 377,
		399, 400, 402, 425, 426, 463,
		476-479, 496-498, 533-535, 544
4-9-12	14	376, 377, 399, 400, 402, 425,
		426, 463, 476-479, 498, 544

C. Respondent's Unlawful Delay in Providing Information to the Union

I find that Respondent has unlawfully delayed in providing information for the periods listed below and as alleged in the corresponding complaint paragraphs:

1. Delay in providing information requested in 2009

Dates of Alleged Delay	Alleged in complaint paragraph(s)
6-5-09 to 4-18-12	535
8-26-09 to 1-22-10	496-498
8-26-09 to 2-29-12	495, 530, 531
8-26-09 to 4-17-12	530, 531
8-26-09 to 4-18-12	495
8-29-09 to 2-29-12	532
8-29-09 to 4-17-12	532
11-16-09 to 1-22-10	494, 500, 501, 504-514
11-16-09 to 1-7-11	512-514, 518
11-16-09 to 2-20-12	97, 98
11-16-09 to 3-18-11	99
11-16-09 to 2-20-12	99-108
11-16-09 to 10-17-10	127
11-16-09 to 10-29-10	483

2. Delay in providing information requested in 2010

Dates of Alleged Delay	Alleged in complaint paragraph(s)
1-18 ¹² -10 to 3-18-11	152
1-18-10 to 2-29-12	70-72
1-18-10 to 3-18-11	73-75, 134, 141, 142, 153-155, 163
1-18-10 to 2-29-12	73, 82, 83
2-22-10 to 3-18-11	121-124, 128-133, 135-137, 143-149, 151,
	158, 159
2-22-10 to 2-20-12	80
3-4-10 to 2-29-12	81
3-4-10 to 3-18-11	126, 150, 157, 182, 183
3-30-10 to 2-20-12	76, 77, 78, 79, 84-86
3-30-10 to 3-18-11	138, 160, 162, 167, 173-177, 194, 196, 197
4-22-10 to 2-20-12	87
4-22-10 to 3-18-11	88, 139, 140, 161, 168-172, 178-181, 184-
	189
4-22-10 to 2-29-12	89, 90, 91
4-22-10 to 3-18-11	190, 191, 195, 198-214, 217-226
6-1-10 to 3-18-11	244-247, 250, 252-257, 259, 260, 262
6-29-10 to 3-18-11	109, 215, 216, 228-237, 248, 249, 258, 261,
	265-272, 494
6-29-10 to 12-14-11	109, 111-118, 164, 166, 215, 216, 227, 234-
	237, 239, 248, 249, 251, 258, 261, 263-272,
	494
6-29-10 to 12-15-11	165
6-29-10 to 12-11-11	228-233
8-4-10 to 2-29-12	92-94

3. Delay in providing information requested in 2011

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Dates of Alleged Delay	Alleged in Paragraph(s)
6-13-11 to 2-7-12 and 2-25-12	15-28
6-13-11 to 12-14-11	341
8-30-11 to 11-10-11	340
8-31-11 to 3-16-12	283
9-5-11 to 4-12-12	348
9-5-11 to 3-6-12	347
9-5-11 to 4-14-12	346
9-15-11 to 2-7-12	344
10-6-11 to 2-7-12 and 2-8-12	349

Par. 152 of the consolidated complaint erroneously alleges that since January 10, 2010, the Respondent delayed in producing the requested information. Inasmuch as the complaint also alleges that the initial request for information was made on January 18, 2010, par. 152 (f) is incorrect.

10-6-11 to 2-1-12	350
12-20-11 to 4-10-12	361
12-20-11 to 3-8-12	362, 367, 471
12-20-11 to 3-8-12	470
12-20-11 to 3-9-12	363, 364, 369, 374, 472
12-20-11 to 3-27-12	469
12-21-11 to 3-27-11	468

D. Complaint Allegations not Supported by the Record

1. Respondent did not unlawfully delay in providing information

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In determining whether an employer has unlawfully delayed in furnishing requested information to a union, there is no authority that defines how much delay constitutes unlawful A determination of whether an employer has acted unlawfully is based on the individual facts of the case. In its decision in Woodland Clinic, 331 NLRB 735, 737 (2000), the Board rejected the employer's assertion that a 7-week delay was minimal and found that the employer's delay in providing information as unlawful. The Board also considered the fact that the information was provided only one day before the employer declared an impasse in bargaining. The Board determined that this sequence of events severely diminished the usefulness to the union at the time that it was provided. In Regency Service Carts, 345 NLRB 671, 674 (2005), the Board found that the employer intended to frustrate negotiations with the union and prevent the successful negotiation of a bargaining agreement. In addition to finding that the employer engaged in surface bargaining, the Union also found that the employer's 16week delay in providing requested information was unlawful. Thus, in both Woodland Clinic and Regency, the Board looked at the facts surrounding the request and the alleged delay. Unlike the circumstances considered by the Board in Woodland Clinic and Regency, there were a number of information requests in this case in which there was minimal delay by the Respondent in providing the requested information and no evidence that the delay severely diminished the usefulness of the information as found in Woodland Clinic and Regency. In determining whether an employer unlawfully delayed in responding to an information request, the Board looks to the totality of the circumstances, including the complexity and extent of the information sought, its availability and the difficulty in its retrieval. West Penn Power Co., 339 NLRB 585, 587 (2003), enfd. in pertinent part 349 F.3d 233 (4th Cir. 2005).

Considering the total circumstances of this case and in light of the tremendous number of the Union's information requests that were made on or about the time of these requests, and in total, I find that Respondent did not unlawfully delay in providing the requested information as alleged in the consolidated complaint:

Dates of Alleged Delay	Complaint Paragraphs
6-29-10 to 8-9-10	238, 240
8-31-11 to 10-27-11	283
9-2-11 to 10-25-11	345
12-6-11 to 1-30-12	304

20 42 52 54 50 61 65 60 50 255 256 3
30-43, 53, 54, 59-61, 65-68, 58, 355, 356 ¹³
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44-49, 51, 52, 55-57, 62-64
44-49
52
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361-364, 367, 369, 374, 434, 445, 446, 449,
469, 470, 471, 472
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468
343
447
448
342, 404
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342, 404
435-437, 456
435-437
456
368
370, 371, 379, 392-395, 398, 427
429, 430
298, 301, 302

There are additional delays in providing information that I have not found to be unlawful. These requests are covered later in this decision as the explanation for my findings relate to other complaint allegations.

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2. Respondent did not fail to provide information as requested

With 533 complaint paragraphs involving at least 1600 separate requests for information, I have found merit to some of the allegations and no merit to others. For requests that were incomplete, ambiguous, or of such a nature that Respondent could not appropriately

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¹³ These complaint paragraphs allege that Respondent unlawfully delayed in furnishing information from December 7, 2011, until February 7, 2012. The complaint also reflects that the original requests for information for grievance nos. 18603 and 18608 (complaint pars. 355 and 356) were made on August 5, 2011, and these requests included nothing more than the standard nonspecific requests for shift reports, staffing reports, timecards, WOR, and payroll histories without any identification as to dates or employee records sought by the request. On December 7, 2011, the Union updated its request to include requests for specific employee records and time periods. Even before the Union modified its request for information to be more specific, Respondent attempted to furnish the requested information as early as August 12, 2011; 12 days after the initial request. Thus, when Respondent provided additional information on February 7, 2012, it only supplemented what had already been provided 12 days after the initial nonspecific request.

respond, I find that Respondent did not violate the Act as alleged. These are addressed below, as well as any complaint allegations that appear to be in error.

a. Pleading errors

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Paragraph 14 alleges that an initial request for information for grievance #15595 was made on September 29, 2011. The complaint also alleges that Respondent provided a portion of the requested information on January 25, 2011. The complaint further alleges that from August 29 to January 25, 2011, Respondent unreasonably delayed in furnishing the Union with the information that was allegedly provided on January 15, 2011. Although the consolidated complaint was amended on August 16 and 28, 2012, a correction in this pleading was apparently inadvertently overlooked. Accordingly, no merit is found to the allegation of an unreasonable delay in providing information as alleged in paragraph 14.

General Counsel amended paragraph 29 (a) on August 16, 2012, to allege that the Union requested information on September 29, 2011, in connection with grievance #18312. Subparts 29(f), (g), and (h) were not amended however. Thus, no merit can be found to the allegations of complaint paragraph 29 alleging that Respondent has unreasonably delayed in furnishing information or failed and refused to furnish information since August 29, 2011, as alleged in subparts (f), (g), and (h) of paragraph 29.

b. Vague and ambiguous requests

Paragraph 376 alleges that on March 29, 2012, in connection with grievance #18882, the Respondent failed to furnish "Employee Record (including Attendance Report and Document Talk-Ins) for previous one (1) year." The request was repeated on April 4 and 9, 2012. Inasmuch as the request lacks sufficient specificity for Respondent to adequately respond, I find no violation in Respondent's failure to furnish the requested information.

E. Whether the Requests Were Made in Bad Faith

Although the Respondent denies that it has failed and refused to provide information to the Union, the Respondent maintains that the Union acted in bad faith with respect to the requests for information that are in issue. In asserting that the Union has acted in bad faith, the Respondent asserts a number of different grounds.

Hughes testified that at a minimum, the Union has 2000 pending grievances. Respondent asserts that from 2007 forward, the Union made more than a thousand information requests for thousands of grievances forcing Respondent to devote a significant amount of resources to attempt to keep up with the flood of requests. There is no dispute that in June 2010, Respondent moved Supervisor Amy Snead to its District Labor Department to assist the Whites Creek facility in responding to the volume of information requests it

The August 16, 2012 complaint amendment changed this date from August 29, 2011 to September 29, 2011.

The August 16, 2012 complaint amendment changed this date from January 15, 2011 to January 25, 2011.

received. Respondent contends that as the Union did in 2009, it has now hoarded hundreds of information requests to which the Union claims that Respondent has not responded or has delayed in providing the information.

1. Respondent's arguments concerning the nature of the requested information

a. The alleged reasons for the requests

Respondent submits that the Union made no individualized determination regarding its need for the information prior to requesting it and that the Union has abused the information process by automatically requesting, in every instance, categories of documents it may not ever need and without any real intention of using the information. Furthermore, Respondent submits that the Union has used the unfair labor practice charges to pressure Respondent to make large concessions on bargaining issues that the Union had previously failed to obtain through the collective-bargaining process. Specifically, Respondent maintains that by accumulating a large number of information requests, the Union is using the unfair labor charges to pressure Respondent to make concessions regarding the use of the shifter position; a change that the Union has not been able to achieve through the collective-bargaining process or through the global settlement in 2010. In support of this argument, Respondent relies on the testimony of Business Agent Hughes when he testified:

The company is using anyone and everyone they want to perform shifting work and they have ... all but destroyed the Shifter classification over the course of the years. And this is what we're trying to resolve and get our arms around.

Respondent argues that because 90 percent of the information requests at issue in this case involve the shifter position, the Union is thus manipulating the information request process to achieve concessions that it has otherwise not obtained in through the bargaining process.

b. Respondent's argument that the Union requests unnecessary records

Respondent also points to a number of examples where it contends that the Union requested six different items for a grievance matter when only one of which would have been sufficient. As an example, Respondent points to union grievance no. 18901; alleging that Supervisor Amy Snead (Snead) delivered packages on a specific date and thus performed bargaining unit work. (GC Ex. 378.) In its January 21, 2012 request for information, the Union requested six categories of information including the delivery and pickup records for Snead, identifying any and all delivery and pickups made by Snead on January 5, 2012. Hughes admitted that the delivery and package records would identify every single package delivered at or picked up with a time stamp and address of the work that Snead performed that date. Hughes further explained that such record is the true source document that identifies the work performed and not the work allegedly performed. Despite High's testimony, however, the Union's request of January 21, 2012, included a request for all of the following:

1. Time card for Supervisor Amy Snead for 1/5/12.

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- 2. Delivery and Pick Up Records for Amy Snead, identifying any/all delivery and pick ups made by Snead on 1/15/12.
- Shuttle and Misload Log identifying all packages which were LIB (Left 3. in Building) and/or shuttled to PCD's or TCD's by Snead on January 5, 2012.
- Verification of which employee(s) (hourly or management) ran Route 4. 30 D on 1/5/12.
- 5. Times which Supervisor Snead departed Whites Creek and returned to Whites Creek on 1/5/12.
- 6. Vehicle number and associated vehicle statistics for UPS equipment operated by Snead on January 1/5/12.

Respondent asserts that based on Hughes' testimony, Snead's delivery and pickup records should have been sufficient and that the duplicative nature of the requested information only belies the Union's claim that it needed all of the requested information. Although Respondent asserts that the Union could have obtained the same kind of information in far fewer documents, I am aware that a union's request for information need not be dispositive of the issue between the parties; it must merely have some bearing on it. Pennsylvania Power Co., 301 NLRB 1104, 1105 (1991). Thus, what might be considered by the Respondent to be superfluous and unnecessary may nevertheless be sufficiently relevant under the liberal "discovery type" standard. NLRB v. Acme Industrial Co., 385 U.S. 432 (1967). Using that standard, I do not find that Respondent was relieved of its duty to provide the information as requested in this complaint paragraph. Furthermore, this standard would preclude me from finding that Respondent is relieved of its obligation to furnish other requested information simply because the Union may request information that exceeds its need

2. The Union's standard request for five categories of documents

30 The Respondent contends that while each grievance is unique and presents a potentially different issue, the Union routinely requests the same documents for any shifterrelated grievance. The Union does not dispute that it commonly requests the same five categories of documents for any shifter related grievance. These documents include timecards, payroll history, staffing reports, shifter detail reports, and the Weekly Operations 35 Report (WOR). Respondent argues that in fact the Union repeatedly requests these same documents when they are not needed and that the Union does so in bad faith. In its brief, Respondent cites an example of the Union's request for information that was admittedly not necessary to process the grievance in question. In grievance no. 19166, shifter employee Pamela Buck claimed that a less senior employee was sent home before she was sent home. 40 Respondent points out that Buck was not making any pay claim. Despite the fact that the employee was seeking no pay adjustment, the Union nevertheless requested the following records in its initial request for information on November 7, 2011:

- 1. Shift Reports
- 2. Staffing Records
- 3. Time Cards

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4. WOR

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5. Payroll Histories

During his testimony, Hughes explained that in this grievance Buck was simply requesting that her seniority be honored. Hughes further acknowledged that based on the facts of the grievance, the documents requested on November 7, 2011 were not necessary. He further explained that this request for information was a prime example of the Union's using what he termed the "cookie cutter five" standard request. Hughes confirmed that if the grievance was shifter related, the Union routinely requested the same five core groups of documents. Admitting that the Union requested more documentation than was necessary for grievance no. 19166, Hughes testified "all is fair in love and war."

The General Counsel's consolidated complaint includes 533 substantive paragraphs identifying specific grievances and the information requested by the Union on various dates concerning the grievance issue. My review of the complaint allegations reflects that out of the 533 initial information requests, only 64 involved information requests that did not also include the Union's five core document categories. Of the remaining 469 initial requests included in the consolidated complaint, only 16 initial requests included a request for some but not all, of the five core or cookie cutter document categories. All of the remaining 454 initial requests demanded the production of shift reports, staffing reports, timecards, payroll histories, and the weekly operations reports for each grievance.

It is apparent that not only does the Union always request these same five categories of documents if the grievance relates in any way to the shifter position, the Union often makes its request by simply copying the words "Shifting Reports, Staffing Reports, Payroll History, Timecards, and WOR's at the bottom of the newly filed grievance near the section entitled "Documents/information Requested by Steward." My review indicates that for 157 of the 454 initial requests seeking the production of these five same document categories, the Union did nothing more than simply add the names of these five documents to the bottom of the grievance form without any reference to dates, employees, or any other identifying factors. In order to respond to this kind of information request, the Respondent had to do so with no information concerning whose shift reports, staffing reports, payroll histories, or time cards the Union was seeking. Furthermore, Respondent was given no indication as to which dates were sought for any of these reports. In many instances, approximately a month to 2 months after the initial request seeking only "Shift Reports, Staffing Reports, Time Cards, WOR (Weekly Operation Reports), and Payroll Histories, the Union usually submitted a more complete request citing specific employees and dates for the requested reports.

Citing East Tennesee Baptist Hospital v. NLRB, 6 F.3d 1139, 1144 (6th Cir. 1993), Respondent asserts that a union cannot insist on receiving information in particular formats demanded by the union. Relying on the Board's decisions in New York Presbyterian Hospital, 354 NLRB 71 (2009), and Food Employer Council, 197 NLRB 651 (1972), Respondent argues that it has no legal obligation to provide the information requested by the Union in the format demanded by the Union. While it is apparent that the Union often uses a shotgun approach in its request for information, there is not a sufficient basis to conclude that the Union's requests were made in bad faith simply because of the brevity of the requests or the

failure to tailor its request to the specific nature of the grievance. The Board has held that an employer is not relieved of the duty to respond to an ambiguous or an overly broad information request; but must request clarification or comply with the request to the extent that it encompasses necessary and relevant information. *Superior Protection Inc.*, 341 NLRB 267, 269 (2004), enfd. 401 F.3d 282 (5th Cir. 2005). Furthermore, the employer's duty to furnish information remains in tack regardless of the potential merits of a grievance. *Schrock Cabinet Co.*, 339 NLRB 182, 185 fn. 6 (2003). *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). Typically, when information is requested in connection with a grievance, the Board's test for relevance is essentially a liberal one. In *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), the Supreme Court sanctioned the Board's view that a liberal and broad discovery type criterion applies to union information requests related to the evaluation of grievances. The Board has continued to follow this standard. As the Board explained in *Pennsylvania Power Co.*, 301 NLRB 104, 1105 (1991), the information sought need not be dispositive of the issue between the parties but must merely have some bearing on it.

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The overall record, including the testimony of Hughes, reflects that the Union routinely requested the same category of documents if the grievance related in any way to employees performing shifter work, without any apparent attention to whether these documents were actually required to analyze the merits of the grievance. As discussed above, the Union very often simply listed these document categories to the bottom of a grievance without any specificity or identifying details. Although such practices could be termed as inefficient or even dilatory, such practices as a general rule would not necessarily constitute bad faith. The record demonstrates that the Union's use of these standard requests, in conjunction with the timing of its multiple requests, has also hindered the process of obtaining information from the Respondent. This practice, which reveals the degenerative working relationship between the Union and Respondent, is discussed in more detail below.

3. Practices supporting Respondent's claims of bad faith

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a. Prevailing authority

Although the Union's practices in general do not rise to the level of bad faith as argued by Respondent, there are patterns of information requests that raise questions as to the Union's underlying motivation. At the very least, these particular requests for information suggest a disinterest in genuine communication with Respondent. By their very nature and timing, such requests almost seem crafted to guarantee Respondent's failure in responding.

There is no question that a union is entitled to request from the employer relevant information necessary for the proper performance of its duties as a bargaining representative. The request must be made in good faith and the Board has found that this requirement is met if at least one reason for the demand can be justified. *Land Rover Redwood City*, 330 NLRB 331, 331-332 fn. 3 (1999); *Associated General Contractors of California*, 242 NLRB 891, 894 (1979), enfd. as modified 633 F.2d 766 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981). Furthermore, there is a presumption that a union acts in good faith when its requests information from an employer until the contrary is shown. *International Paper Co.*, 319

NLRB 1253, 1266 (1995), enf. denied on other grounds 115 F.3d 1045 (D.C. Cir. 1997). *O & A Industries*, 269 NLRB 986, 987 (1984).

Although an employer has a duty to provide information to a reasonable request, the duty cannot be defined in terms of a per se rule. The employer is required only to make a reasonable good faith effort to respond to a request as promptly as circumstances will allow. *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). In assessing the promptness of an employer's response, the Board will also consider the complexity and extent of information requested, its availability, and the difficulty in retrieving the information. *West Penn Power Co.*, 339 NLRB 585, 587 (2003); *Samaritan Medical Center*, 319 NLRB 392, 398 (1985), enfd. in relevant part 394 F.3d 233 (4th Cir. 2005); *Postal Service*, 308 NLRB 547 (1992). As pointed out by the Court in *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 153 (1956), each case must turn on its particular facts when determining whether there has been a breach of a failure to bargain in good faith.

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In West Penn Power Co., above, a union was not found to have acted in bad faith when it flooded the employer with information requests and the employer was not excused for its delay or inadequacy of response. The union submitted 82 separate requests for information concerning 43 different subjects over a 19-month period. In affirming the Board, the court rejected the employer's argument that the union acted in bad faith by its repeated and expansive information requests. In doing so, however, the court noted that there was no evidence that the employer made any effort to obtain or provide the requested information. In the instant case, I note that Respondent has repeatedly attempted to respond to the myriad of information requests that are in issue.

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The Board has also noted that if a union's only reason for making its requests was for harassment the employer would not be required to comply with the request. *Island Creek Coal Co.*, 292 NLRB 480, 489 (1989); *Hawkins Construction Co.*, 285 NLRB 1313 (1987), enfd. denied on other grounds 857 F.2d 1224 (8th Cir. 1988).

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b. Requests for information that impede and delay responses

In reviewing the information requests that are the subject of these consolidated cases, I have found a number of requests for information where it is apparent that the nature of the requests impede, delay, or prevent a lawful response. Some, but not all of these are described below.

Paragraph 13

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40 On August 8, 2011, in connection with grievance #18772 involving the discharge of Eric Rhodes, Len Hughes requested the following:

- 1. Payroll History for Eric Rhodes and Mohamed Baskin for week ending 7/23/11 and 7/30/11.
- 2. Employee record (Attendance & Talk-Withs) for Rhodes and Basin.

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- 3. Copies of any/all statements, documents or information in the Company's possession regarding the alleged incident(s) of 7/21/11 and subsequent investigation.
- 4. Copies of any/all statements, documents or information which the Company reviewed and/or considered in discharging Rhodes and Baskin.
- 5. List of all witness names provided to the Company by Rhodes and/or Baskin (both hourly and management.)
- 6. Copies of any statements provided to the Company (including Security) by Rhodes and/or Baskin.

On August 18, 2011, the Union sent another request for this same information. On August 30, 2011 and within 22 days from the Union's initial request, Respondent furnished all the requested information. The next day after receiving the previously requested information, Hughes sent Respondent an email requesting:

- 1. Supervisor Barry Anderson's hire date.
- 2. List of previous jobs and dates of Supervisor Barry Anderson since he has worked at Whites Creek.
- 3. Company policy addressing how management is expected to behave outside of the workplace concerning interaction with hourly employees (e.g. fraternalization, etc.....)
- 4. Available dates and times the Union can interview Sup. Barry Anderson
- 5. Verification of employment of the following alleged witnesses to this case, to include, Supervisor Barry Anderson, Greg Taylor, Craig Riggins, Greg Taylor Jr., Devin Tucker, Devin Mayer and Kendall Gross.
- 6. Verification of dates(s) of separation from employment regarding all employees identified in Item 5 above.

Although there is no evidence that Respondent furnished the information requested on August 31, 2011, as alleged in paragraph 13, the record also reflects that within 22 days of receiving the initial information request concerning grievance #18772, Respondent furnished all six categories of requested documents. Although there is no direct evidence of bad faith by the Union in making its August 31, 2011 request, it cannot be ignored that the Union made an entirely new request for information on the day following Respondent's full compliance on August 30, 2011. Inasmuch as there is no evidence that the information requested on August 31, 2011, has been provided, I find merit to complaint allegation 13.

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Paragraph 365

On January 3, 2012, the Union filed grievance #18653 contending that a feeder driver from Evansville, Indiana facility was performing shifting work and affecting the pay for employee David Williams. At the bottom of the grievance, the following documentation was listed as documents requested by the Steward. No additional information was provided with respect to the employees for which the information was requested or the time periods for which the information was requested.

Shift Reports
Staffing Reports
Time Cards
WOR (Weekly Operation Report)
Payroll History

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Complaint paragraph 365 (b) alleges that on January 20, 2012, Hughes requested by email that Respondent furnish the Union with the following information:

- 1. Shift reports for David Williams for week ending 1-1-12.
- 2. Shift reports for (out of town feeder) James Gidcumb for week ending 1-1-12.
- 3. Payroll history for David Williams for week ending 1-1-12.
- 4. Payroll history for (out of town feeder) James Gidcumb for week ending 1-1-12.
- 5. Time cards for David Williams for week ending 1-1-12.
- 6. Time cards for (out of town feeder) James Gidcumb for week ending 1-1-12.
- 7. WOR (Weekly Operations Report) for week ending 1-1-12.
- 8. Staffing Report (Vacation and Call-in sheets and staffing) for week ending 1-1-12.

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The complaint further alleges that on January 28, and only 8 days after this more specific request of January 20, 2012, Hughes again requested this same information.

On January 31, 2012, Hughes sent another email to Respondent requesting the following information in conjunction with grievance #18653:

- 1. Shift reports for David Williams for week ending 12.31.11.
- 2. Shift reports for (out of town feeder) James Gidcumb for week ending 12.31.11.
- 3. Payroll history for David Williams for week ending 12.31.11
- 4. Payroll history for (out of town feeder) James Gidcumb for week ending 12.31.11.
- 5. Time cards for David Williams for week ending 12.31.11.
- 6. Time cards for (out of town feeder) James Gidcumb for week ending 12.31.11.

- 7. WOR (Weekly Operations Report) for week ending 12.31.11.
- 8. Staffing Report (Vacation and Call-in sheets and staffing) for week ending 12.31.11.
- 5 On February 7, 2012, Respondent furnished items 3, 4, and 7 of the items requested on January 31, 2012.

On February 10, 2012, Hughes sent an email asserting that the Respondent had failed to comply with the information request and asked that Respondent provide all missing information immediately.

On February 22, 2012, Respondent furnished items 1, 5, and 8 of the items requested on January 31, 2012.

15 In the consolidated complaint, the General Counsel alleges that Respondent has failed and refused to furnish the Union with items 2 and 6 as requested on January 31, 2012. Although there is no evidence that Respondent provided these last two items, the manner in which these requests were made cannot be ignored. The Union's initial request for information gave Respondent no direction as to the actual documents that were desired. Although the Union waited 17 days before providing a specific request for information, the 20 Union waited only 8 days to submit an additional request for this same information on January 20, 2012. Despite its requests of January 3, 2012 and January 20, 2012, Respondent sent an entirely new request for information concerning this same grievance on January 31, 2012. There is no dispute that despite the fact that the Union made three separate requests for 25 information concerning this same grievance within a 28-day period, Respondent nevertheless provided 6 of the 8 requested document categories by February 22, 2012. Although I find merit to this complaint allegation, the circumstances surrounding these requests certainly present a question of the Union's underlying motivation.

30 Paragraph 383

On November 30, 2011, the Union filed grievance #18984, asserting that seasonal employees were performing work in the shifter classification. At the bottom of the grievance, the following documents were identified as information requested by the steward. No specifics were given with respect to the time period, the employee records involved, or the departments for the requested documents.

Shifting Reports Staffing Reports Time Cards WOR's Payroll History

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On January 20, 2012, and almost two months after the initial skeleton request, the Union requested that the Respondent provide the following information concerning the grievance:

	1.	Shift reports for David Williams for week ending 11-26-11.
	2.	Shift reports for Charles Shue for week ending 11-26-11.
	3.	Shift reports for Jose Porez for week ending 11-26-11.
5	4.	Shift reports for Michael Lazarsky for week ending 11-26-11.
	5.	Shift reports for Preston Shaw for week ending 11-26-11.
	6.	Shift reports for Cecil Buchanan for week ending 11-26-11.
	7.	Payroll history for David Williams for week ending 11-26-11.
	8.	Payroll history for Charles Shue for week ending 11-26-11.
10	9.	Payroll history for Jose Porez for week ending 11-26-11.
	10.	Payroll history for Michael Lazarsky for week ending 11-26-11.
	11.	Payroll history for Preston Shaw for week ending 11-26-11.
	12.	Payroll history for Cecil Buchanan for weekending 11-26-11.
	13.	Time cards for David Williams for week ending 11-26-11.
15	14.	Time cards for Charles Shue for week ending 11-26-11.
	15.	Time cards for Jose Porez for week ending 11-26-11.
	16.	Time cards for Michael Lazarsky for week ending 11-26-11.
	17.	Time cards for Preston Shaw for week ending 11-26-11.
	18.	Time cards for Cecil Buchanan for week ending 11-26-11.
20	19.	WOR (Weekly Operations Report) for week ending 11-26-11.
	20.	Staffing Report (Vacation and Call-in sheets and staffing) for week ending 11-26-11.

On January 28, 2012, and 8 days after requesting the 20 items on January 20, 2012, the Union requested that Respondent provide the information immediately. Three days later, however, the Union submitted a new request for information concerning this grievance. The Union included all of the 20 items from its January 20, 2012 request and included an additional request for (1) shift reports for Brian Demonbreun for the week ending November 26, 2011; (2) payroll history for Brian Demonbreun for the week ending 11-26-11; and (3) timecards for Brian Demonbreun for the week ending 11-26-1.

Respondent furnished part of the requested information on February 7 and on February 8, 2012. Although I find merit to the allegations of complaint 383, the circumstances of the Union's requests are similar to those described above concerning complaint paragraph 365; raising the same questions concerning the Union's motivation.

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c. Respondent attempts to respond to insufficient requests

The consolidated complaint also contains a number of requests to which Respondent attempted to provide information and yet the Respondent is alleged to have delayed in providing information or is alleged to have failed to provide information. The circumstances of this group of requests and responses are all quite similar.

The consolidated complaint contains 29 paragraphs that involve the Union's requests for information that were made between March 30, and July 1, 2011, in connection with 29 separate grievances. In each instance, the Union's initial request for information included

only the five nonspecific categories of documents; timecards, staffing reports, shift reports, payroll histories, and weekly operations reports without any clarification as to time periods, employee records, departments, or other specific information sought. Despite the fact that the initial request was without specificity, Respondent provided information in response to each of these initial requests. In response to the non-specific initial requests that were made on March 30, April 4 and 5, May 16 and 17, 2011, Respondent furnished a part of the requested information on February 7, 2012. (Pars. 322, 324, 325-330, 332, 333, 336-338). On March 11, 2012, and after waiting for approximately a year after the initial request for information, the Union made a specific request for the specific documents that it was seeking. Although I have found merit to each of these complaint paragraphs, I also note that in each instance, Respondent attempted to provide information to the Union's vague and unspecified request and the Union waited approximately a year before giving Respondent a specific and defined request.

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Complaint paragraphs 286 and 287

In reviewing the Union's requests using these same repeated categories of documents, there are, however, instances where Respondent's ability to adequately respond was significantly hampered by the Union's use of these nonspecific requests. The circumstances of such requests lend further support for Respondent's argument concerning the Union's motivations. Examples of such circumstance arose when the Union filed grievance #10133 (Complaint par. 286) and grievance #10134 (Complaint par. 287) on May 3, 2011, and simply added the same skeleton list of document to the bottom of each grievance in hand-written script. Both grievances were filed by Steward David R. Williams. On May 20, 2011, Respondent provided staffing reports, timecards, and a WOR in response to the two grievances and the nonspecific requests for information. On February 7, 2012, Respondent provided the payroll history for Williams. Thereafter on March 7, 2012, Respondent additionally provided information concerning staffing reports, timecards, and the WOR. Finally, 10 months after simply hand-writing a skeleton information request at the bottom of these grievances, the Union made a specific request on March 11, 2012, for the shift reports and payroll histories for 2 days for employee Greg White. The Union repeated this request 3 days later and the Respondent provided the requested payroll histories on March 22, 2012. The Union repeated its March 11, 2012 request on March 27, 2012. While the General Counsel alleges that since March 11, 2012, Respondent ultimately failed to furnish the shift report for Greg White for April 27, 2011 and April 28, 2011, it is apparent that Respondent made a good faith effort to respond to the vague initial request and then later responded to the Union's more specific request that was not given until 10 months later. I also note that within 15 days after the Respondent provided its fourth response to the Union's request for information, the Union filed its charge in 26-CA-78241 alleging that Respondent had failed and refused to provide information. After considering the entire interchange between the Union and the Respondent, it is apparent that from the time of the Union's initial unspecified request on May 3, 2011, Respondent furnished information on four separate occasions even without the benefit of knowing what specific data that the Union was seeking until March 11, 2012. Although I cannot conclude that the Union acted in bad faith in these requests on May 3, 2011, it is apparent that the Union's actions contributed to Respondent's failure to furnish all of the requested information by the time that the charge was filed. Accordingly, I am not

convinced that Respondent unlawfully failed and refused to furnish information as alleged in paragraphs 286 and 287.

Complaint paragraphs 301 and 302

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On May 27, 2011, in connection with grievances 15933 and 15934, the Union requested only the five nonspecific categories of documents. Without waiting for any additional clarification as to specific documents sought by the Union, Respondent provided shift reports, staffing reports, timecards, weekly operation reports, and payroll histories for the employee who filed the two grievances on December 7, 2011. On February 7, 2012, Respondent additionally provided the payroll history for another employee referenced in the two grievances. On March 11, 2012, Hughes then submitted a specific information request for payroll histories and time cards for an employee who did not file grievances 15933 and 15934. Three days later, Hughes requested the same information that was requested on March 11, 2012. With respect to grievance 15933 (complaint par. 301), Hughes also requested the same information on March 27, 2012. On April 13, 2012, Respondent provided part of the information requested on March 11, 2012, and in response to both grievances 15933 and 15934. The General Counsel alleges that Respondent unreasonably delayed from March 11 to April 13, 2012, in providing the requested information. Having considered the record as a whole, I do not find that Respondent unlawfully delayed in furnishing information as alleged in paragraphs 301 and 302.

Complaint paragraphs 288 and 289

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On May 27, 2011, in connection with grievances 10135 and 10136, the Union requested its customary five nonspecific categories of documents. Even without any additional clarification as to the specific documents that the Union was seeking, the Respondent provided information on February 7 and March 7, 2012. On March 11, 2012, however, the Union revised the information request to clarify that it was seeking a shift report and a payroll history for two employees in connection with these two grievances. Three days later, the Union again requested the same information. On March 22, 2012, Respondent provided the payroll histories requested on March 11, 2012. Paragraphs 288 and 289 of the consolidated complaint allege that Respondent failed and refused to provide all of the information requested on March 11, 2011. Based on the actions of both Respondent and the Union, I find no merit to these allegations.

Complaint paragraphs 296, 297, and 298

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On July 2, 2011, the Union requested the five nonspecific categories of documents in connection with grievances 14210, 14211, and 14212. On July 26, 2011, and without any additional information from the Union that would clarify what specific documents that the Union was seeking, Respondent provided shift reports, staffing reports, and weekly operations reports. On February 7, 2012, Respondent additionally provided weekly operations reports and payroll histories. On March 7 and 8, 2012, Respondent also provided shift reports, and additional staff reports and weekly operations reports. Finally, and after Respondent had provided information on three separate occasions, Hughes requested Respondent to provide

payroll histories, and timecards for specific employees on specific dates on March 11, 2012. Three days later, Hughes again requested this information. On March 27, 2012, Hughes additionally requested this same information. On April 13, 2012, Respondent furnished time cards in response to the March 11, 2012 request with respect to grievances 14211 and 14212. Paragraphs 296, 297, and 298 allege that Respondent has failed and refused to provide all the information requested by the Union on March 11, 2012. Based on the actions of both Respondent and the Union, I find no merit to these allegations.

Complaint paragraphs 318, 319, 320, and 321

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Paragraphs 318, 319, 320 and 321 allege that the Union requested its five nonspecific categories of information on April 18, 2011, in connection with grievances 16656, 16657, 16659, and 16660. For each grievance and initial information request, Respondent provided information. In response to the information request for grievance # 16656, Respondent provided information on May 20, 2011, February 7, and March 7, 2012. As with all of the complaint allegations discussed in this section, Hughes eventually submitted a request for information on March 11, 2012 that identified the specific documents that the Union was seeking. Furthermore, as with the other information requests described above, Hughes again requested the same information within 3 to 4 days. In regard to grievances 16656, 16657, and 16660. Hughes again requested the information on March 27, 2012. With respect to grievance 16656 and 16660, Respondent provided some of the requested information on March 22, 2012. Complaint paragraphs 318, 319, 320, and 321 allege that Respondent has failed and refused to provide all of the information requested on March 11, 2012. Noting that the Respondent attempted to furnish information to the Union on multiple occasions before the Union ultimately provided a specific and unambiguous request; I do not find merit to these allegations.

d. Information requests that generated duplicate responses

30 Paragraphs 334, 335, 336, and 339

Paragraph 334 alleges that on April 18, 2011, the Union filed grievance # 15702, alleging that a Feeder was performing shifting work. At the bottom of the grievance form, the following documents were listed as information requested by the Steward:

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- 1. Shifting Reports
- 2. Staffing Reports
- 3. Time cards
- 4. WOR's

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5. Payroll History

Despite the fact that the Union provided no other information as to what time periods, employee records, or departments were requested for the identified records, Respondent furnished items 2, 3, and 4 on May 20, 2011. There is no evidence that there was any response from the Union or any additional communication identifying the specific documents

that the Union was seeking. On January 27, 2012, Respondent again furnished documents in response to items 2, 3, 4, and a portion of the requested documents for item 5.

On March 11, 2012, Hughes requested that Respondent provide the payroll history for Troy Moran for the week ending April 14, 2011. Three days later on March 15, 2012, Hughes requested the same information. Although the complaint alleges that since March 11, 2012, the Respondent has failed and refused to provide the payroll history for Moran for the week of April 11, 2011, the record reflects that Respondent provided information twice in response to the original request of April 18, 2011, and the Union waited almost a year after the first request to identify specific information that it was seeking.

A similar sequence of communication is reflected in the information requests identified in complaint paragraphs 335 and 339. As alleged in paragraph 335, the Union filed grievance #16702 on April 11, 2011 listing the same 5 generic categories of documents at the bottom. On May 20, 2011, Respondent furnished staffing reports, time cards, and the WOR. Even though the Union had never provided any specific information concerning time periods, employees, or departments, the Respondent again provided staffing reports, timecards, and the WOR on March 8, 2012. Finally, on March 11, 2012, Hughes requested shift reports for David Williams and George Gilbert for the week ending April 9, 2011. Three days later, Hughes requested the same information. Although the complaint alleges that Respondent has failed and refused to provide shifting reports since March 11, 2012, the record reflects that Respondent responded to the original request despite the Union's failure to identify the specific records that it was seeking until almost a year after the initial request. Based on the actions of both Respondent and the Union, I find no merit to these complaint allegations.

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The Union filed grievance #17125 on July 1, 2011, listing the same five generic categories of documents at the bottom of the grievance, as shown in complaint paragraph 339. Within 5 days Respondent furnished the Union staffing reports, shift reports, and the weekly operation report. On February 7, 2012, Respondent furnished payroll histories and on March 8, 2012, Respondent again furnished staffing reports, shift reports, and the weekly operation report. Finally, on March 11, 2012, and almost a year after the initial nonspecific request for documents, Hughes submitted a request for information seeking the timecard and the payroll history for (out of town feeder) James Gidcumb for June 28, 2011. Three days later, Hughes submitted another request for the same information. Although the complaint alleges that Respondent has as yet failed to provide the time card for Gidcumb, the complaint also confirms that Respondent responded to the initial non-specific request for information within 5 days and then subsequently provided additional information three more times, including a duplication of information that was initially provided. Accordingly, I find no merit to the allegations in complaint paragraph 339.

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Complaint paragraphs 241 and 242

On July 26, 2010, in connection with grievance #13607 and Grievance 13608, the Union filed requests for information seeking six categories of information including its standard five shifter-related categories. The Union included specific requests for time periods and individual employee records. For both grievances, the Respondent and the Union engaged

in the same actions on the same dates. On August 9, 2010, Respondent provided all of the information requested with the exception of shift reports for two employees. Over a year after receiving the information from the Respondent, Hughes simply repeated his original July 26, 2010 request. The Union did not acknowledge that they had already received virtually all of the requested information and did not modify its request to cover only the remaining shift reports. On October 10, and November 3 and 16, 2011, the Union repeated this same request for all the information that it had initially requested on July 26, 2010. On December 14, 2011, the Respondent again provided all of the same information that it had initially provided on August 9, 2010, as well as the requested shift reports. Despite the fact that Respondent provided all of the requested information to the Union, as well as almost all of the information twice, Hughes repeated the Union's July 26, 2010 request on December 15, 2011; the next day after Respondent duplicated its initial response. Complaint paragraphs 241 and 242 allege that from July 25, 2010, until December 14, 2011, Respondent unreasonably delayed in furnishing the Union with the requested shift reports. In viewing the Union's initial request for information, there is nothing that would indicate that the requested shift reports for only these two employees were of such a controversial matter that Respondent would have intentionally sought to deny furnishing the information or to delay in furnishing this information. Respondent, in fact freely provided timecards, payroll histories, staffing reports, Weekly Operations Reports, the Feeder Coverboard Lists, and the Daily Call Lists within 14 days of the initial request. The series of events would indicate that apparently the Union did not review the information provided to it at any time during this 16-month period, despite making five additional requests after the Respondent initially responded on August 9, 2010. It is apparent that any delay in providing the shift reports was likely inadvertent. Based on the Union's duplicative requests, it is also apparent that the Union made no attempt to assess or review the information that it received and its interest appeared to be more toward documenting its requests for information than in obtaining the requested information. Accordingly, I find no merit to complaint paragraphs 241 and 242.

Complaint paragraphs 273-279 and 110

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This absence of communication that is described above was not an isolated incident. The Union also made similar requests for information on July 26, 2010 in connection with grievances 14025, 14028, 14043, 14046, 14051, 14204, 14229 and 10197 as alleged in complaint paragraphs 273, 274, 275, 276, 277, 278, 279, and 110. In each instance, Respondent provided virtually all of the information on August 9, 2010, with the exception of some individual employee shift reports. Furthermore, for each grievance the Union repeated its requests for information on September 27, October 10, and November 3 and 16, 2011. On December 14, 2011, the Respondent again furnished all of the same information that it had provided on August 9, 2010. In each instance, the Union repeated its December 15, 2011 initial request without any acknowledgment that the Respondent had already provided information twice in response to the Union's request for information. While it would appear that Respondent failed to provide every single document covered by these separate requests on July 26, 2010, there is also no evidence that the Union read, reviewed, or modified its

With respect to complaint par. 278, the General Counsel alleges that Respondent also failed to provide Daily Call Lists for a 4-day period.

requests in response to the information that was furnished by the Respondent. Overall, the Union's response to the Respondent's production of records raises a question as to whether the Union's priority was the receipt of the requested information or the opportunity to assail Respondent with additional information requests during a 10-week period in the months prior to the filling of the first charge. Inasmuch as Respondent substantially complied with the Union's request within 14 days, in addition to providing this same information a second time, and in light of the Union's conduct in response, I do not find that Respondent failed and refused to furnish information in violation of Section 8(a)(5) as alleged in complaint paragraphs 273-279 and 110.

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e. The Union's disproportionate number of requests

It is well settled that a union requesting relevant information to which it is entitled does not need to repeat the request. De Palma Printing Co., 204 NLRB 31, 33 (1973); Aero-Motive Mfg., 195 NLRB 790, 792 (1972), enfd. 475 F.2d 27 (6th Cir., 1973); Bundy Corp., 292 NLRB 671, 672 (1989). The Board observed in DePalma Printing that if a union is entitled to the information at the time it made the request, the employer is obligated to furnish the information and there is no obligation for the union to repeat such request any given number of times. The obligation falls to the employer to furnish the information as promptly as practical. In the instant case, however, the Union did not apparently heed the Board's assurance. The record, in fact, reflects that for each grievance identified in the complaint, the Union made multiple requests for information. As discussed above, the record supports a finding that Respondent unlawfully delayed in providing requested information in response to some of these requests and the Respondent has also unlawfully failed and refused to provide information in response to some of these requests. What the record also reflects, however, is that a disproportionate number of requests are unnecessarily duplicated. The requests appear to have no correlation to Respondent's responses and provide no reasonable time period for a response. The timing and repetition of these requests raises a question concerning the Union's motivation and lends support to Respondent's claim that the Union's motives included more than simply obtaining information for grievance processing. It is also apparent that as a result of the barrage of these repetitive requests, the Respondent may not have been able to respond as promptly as the Board anticipated in *De Palma*.

As the record reflects, the Union typically made its repetitive requests by email. In the body of these emails, there was no listing of what the Union was seeking or any reference to what the Respondent may have already provided. In order to fully comply with each email request for information, Respondent had to go back to each pending grievance to see what had previously been requested and what had already been furnished to the Union. I have included a discussion of these successively filed requests for information because these requests epitomize the absence of communication between the parties and the pronounced disintegration of their working relationship. I have listed below some examples of these information requests.

Paragraphs 353, 354, 475, and 480

The Union filed its first charge in this matter on January 23, 2012. On March 7, 2012,

		ied its first charge in this matter on January 25, 2012. On March 7, 2012,
_	_	information request in conjunction with grievance #18390. As reflected
5	in paragraph 353, the	e Union requested the following:
	1.	Names of each employee from the outside service ("A-Team") who performed work at Whites Creek during any day of weeks ending 2-4-12 and 2-11-12.
10	2.	Time cards for each employee identified in Line Item 1 above for each day of weeks ending 2-4-12 and 2-11-12.
	3.	Payroll History for each employee identified in Line Item 1 for weeks ending 2-4-12 and 2-11-12.
15	4.	Copy of any current and valid contract/sub-contacts between UPS and the "A Team" since October 2010 until present.
	5.	Copies of any previous contracts/sub-contracts between UPS and the "a Team," Diversified/Diversity, Inc. and any other outside services for which the Company offered work specific to 'pallet' related work, recording trail numbers from the Whites Creek yard, cleaning trash
20		from/around pallet doc and on the yard and cleaning out trailers (to include trash removal and sweeping) prior to the SRAPGC (2010-10-091) ruling on this same subject.
25	6.	Verification of any termination, regardless of length of time (including specific dates) of any previous and/or current contracts/subcontracts identified in Line Items 4 and 5 above.
20	7.	Copy of the work schedules for each employee identified in Line Item 1 above, to include their scheduled work week, hours of work including overtime and the specific work performed by each employee on each day during weeks ending 2-4-12 and 2-11-12.
30	8.	Copies of all Trailer Sheets for which employees (current bargaining unit or subcontractors) recorded trailer numbers on Whites Creek property during Peak Season (October through December) 2011 until present.
35	9.	Copies of Time Cards and Payroll History for each Feeder Driver (seniority or pre-senior) who performed CPU work during each day of weeks ending 2-4-12 and 2-11-12.
	10.	Copy of the current and complete Feeder CPU Bid in effect during weeks ending 2-4-12 and 2-11-12.
40	11.	All 'General Conditions' attachments as referenced in the 3-27-03 'A Team Service Agreement.'
	12.	Copies of any/all 'Termination Notices' associated with this Agreement from 2003 through present.
	13.	Any/all 'Purchase Orders,' 'Agreement Forms,' 'UPS Purchasing Cards,' applicable 'Riders' associated with this Agreement which
45		defines the scope of this Agreement and the commencement and

completion of work assigned.

- 14. List of any/all 'Various Locations' for which this Agreement and applicable Riders apply and the dates of effect.
- 15. Time cards and work performed by "A-Team" employees at other UPS locations within the Local 480 jurisdiction by employees of the A-Team during weeks ending 2-4-12 and 2-11-12.

On March 9, 2012, and only two days after making this comprehensive 15-item request, Hughes made an additional request for this same information. On March 13, 2012, Hughes sent another request seeking this same information. On March 18, 2012, and 3 days after filing its second charge in this matter, Hughes sent an additional request for this information. On April 6, 2012, the Union filed its third charge in this matter. Thus, as of the date of the Union's third charge, the Union had already submitted four successive requests for this same extensive listing of information in less than a month.

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The Union filed a parallel request for information in connection with grievance #21822 on March 7, 2012. (Complaint par. 475) The request included a 15-item request covering generally the same kinds of information for weeks ending 3-3-12 and 3-10-12. As with the previous grievance, the Union followed up its March 7, 2012 request with additional requests for the same information on March 13 and 18, 2012. Hughes additionally filed a request for information in connection with grievance #62872 on March 7, 2012, seeking 17 categories of documents. (Complaint par. 480) As with the other requests of information discussed above, Hughes also submitted this same request again on March 13 and 18, 2012.

This succession in requests is also seen following an initial information request that the Union made on March 12, 2012. This request that is identified in paragraph 354 contains a request for seven groupings of information. Hughes then repeated this same request for information on March 20, 23, 29, and April 4, 2012. Similar to the request described above, the Union made 5 requests for the same information within a 23-day period.

In paragraph 353 and 354, the General Counsel alleges that since March 7, 2012, and March 12, respectively, Respondent failed and refused to furnish information. Complaint paragraph 475 and 480 also allege that Respondent has failed and refused to furnish the information requested on March 7, 2012. Although there is no evidence that Respondent provided this information prior to the filing of the third charge on April 6, 2012, I cannot ignore the nature and the timing of these requests and I question whether the Respondent could have adequately and promptly responded before the filing of this charge. I do not find that the record supports a finding that Respondent violated the Act as alleged in complaint paragraphs 353, 354, 475, and 480.

Complaint paragraphs 418, 442, 443, and 427

Three days before filing its second charge in this matter, the Union submitted three requests for information in connection with grievances 19065, 19140, and 191941. (Complaint pars, 418, 442, and 443) Each request included four to five categories of documents and information. After making each of these multi-part requests on March 11,

2012, Hughes requested the information again on March 20 and then again on March 23, 2012.

This same sequence of successive requests is also seen in the Union's request for information in connection with grievance 19111 on December 11, 2011. (Complaint par. 427) The initial request included only a request for the 5 core documents without specificity for time periods, employee records, etc. On January 20, 2012, Hughes requested the production of 23 categories of documents that included shift reports, payroll histories, time cards, weekly operation reports, and staffing reports for seven different employees. On January 28, 2012, Hughes repeated this same request. Three days later on January 31, 2012, Hughes again repeated this same request. On February 10, 2012, the Union once more requested this same information. On February 7and again on February 22, 2012, Respondent provided part of the requested information. The complaint alleges that Respondent delayed in furnishing information from January 20 until February 22, 2012 and also failed to provide all of the information requested on January 20, 2012.

The Union's practice of successive requests is also seen in connection with the Union's request for information on March 29, 2012, and related to grievance 21454 (Complaint par. 477). The request contained eight subparts requesting the following:

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1. Any/all statements (from management or hourly employees) in the Company's possession which are associated with this grievance concerning any/all dates between 2-27-12 and 3-2-12.

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Monthly Interest List/Bid Sheet for extra/coverage work in the Hub for February 2012.
 Monthly Interest List/Bid Sheet for extra/coverage work in the Hub for

March 2012.

4. Steward Call Verification List identifying any/all employees who were called and offered extra work (whether they worked or not) on 2-27-12.

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5. Steward Call Verification List identifying any/all employees who were called and offered extra work (whether they worked or not) on 2-28-12.

6. Steward Call Verification List identifying any/all employees who were called and offered extra work (whether they worked or not) on 2-29-12.
7. Steward Call Verification List identifying any/all employees who were

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8. Steward Call Verification List identifying an/all employees who were called and offered extra work (whether they worked or not) on 3-2-12.

called and offered extra work (whether they worked or not) on 3-1-12.

Six days later on April 4, 2012, Hughes requested that Respondent provide this same information. Five days later on April 9, 2012, Hughes again requested the same information. Two days later, on April 11, 2012, Hughes again requested the same information. On April 19, 2012, the Union again requested the same information and finally on April 24, 2012, Hughes requested this same information again. Thus, in less than a month, Hughes requested the same information on six different dates. I also note that two of these requests were made after the Union's first two charges and four requests were made after the Union's third charge was filed.

Inasmuch as there is no evidence that Respondent furnished the requested information related to the above-identified grievances by the time that the Union filed its third charge on April 6, I find merit to those related complaint allegations. Because there was not an unreasonable delay in furnishing information as alleged in complaint paragraph 427, I have not found merit to that portion of the complaint paragraph.

f. The Union's barrage of information requests in late 2011

On October 16, 2011, in connection with a grievance titled "This Pertains to all Outstanding Information Requests," Hughes requested that Respondent provide the Union with:

- 1. Shift Reports
- 2. Payroll History
- 3. Time Cards

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- 4. WOW (Weekly Operations Report)
- 5. Staffing Report (Including Coverage of absent employees, Call In's, Vacations, etc....)
- 6. Copy of Feeder Coverboard
- 7. Feeder Call Sheets

Hughes provided no dates, employee records, departments, shifts, or anything that would provide specific information. Hughes then repeated this request for information on December 21 and 27, 2011. Paragraph 10 of the consolidated complaint alleges that since October 16, 2011, Respondent has failed and refused to furnish the requested information.

On December 14, 2011, in connection with another grievance titled "This Pertains to all Outstanding Information Requests," Hughes requested that Respondent provide the following:

- 1. Time Cards
- 2. Payroll Histories
- 3. Shift Reports
- 4. WOR's (Weekly Operations Reports)
- 5. Coverboard (Call Sheets)
- 6. Staffing Reports
- 7. Employee Records
- 8. DIAD Text Messages
- 9. DIAD Delivery and Pick Up Records
- 10. SPARCS Reports, etc....

No additional information was provided to Respondent to identify time periods, employees, departments, shifts, or anything else provided to narrow the scope of the request to allow for an appropriate response. Hughes then repeated this request on December 21 and on 27, 2011.

Paragraph 11 of the consolidated paragraph alleges that since December 14, 2011, Respondent has failed and refused to furnish the requested information.

In each of these requests for information, the Union essentially requested every single document encompassed by the term 'outstanding information requests." In each instance, the initial request demanded the production of 7 to 10 categories of documents without identifying any specific employee records, departments, time periods, or any other identifying information for which an appropriate response could be made. Despite the fact that the Union repeated these same generic and non-specific requests on December 21 and 27, 2011, no specific requests were ever made. The Union could not have reasonably expected that Respondent could process these requests. The requests were not tied to any specific grievances and appear to serve as essentially two more demands to which Respondent could not reasonably respond. Accordingly, I find no merit to the allegations in either of these complaint paragraphs.

As discussed above, the Union commonly requested the same information more than once and often as many as three or more times. This practice alone may not demonstrate the Union's bad faith as alleged by Respondent. The overall record, however, demonstrates that the Union implemented a barrage of requests during the time period just prior to filing its charges in this matter. There is no direct evidence that the Union did so to harass the Respondent, however, the extent of information requests during a particular period of time prior to the filing of charges certainly brings into question the Union's motivation in requesting information in the manner that it did.

The Union's requests for information during the time period between 2009 and 2012 as covered by the consolidated complaint include a variety of forms including handwritten requests added to the bottom of grievances, emails setting out specific documents to be furnished, and simply emails that recite grievance numbers with corresponding requests to produce information that has previously been requested for those individual grievances. Whether the requests were the initial requests or were duplicated requests, each request in these various forms constitutes a separate request for information. In order to adequately respond to the request in any form, the Respondent was required to not only review the information requested, but to also determine whether any information had already been provided. This was true whether the Union's request specifically listed the documents sought or simply referred the Respondent to an individual grievance in the body of an email. Regardless of the form of the request, the Respondent had to conduct the same kinds of searches in order to respond. By inundating the Respondent with multiple and duplicative requests for information, the Union was able to essentially paralyze Respondent's ability to adequately respond to such an inordinate number of multiple requests.

Although there is a continuous pattern of filing information requests throughout the period between 2009 and 2012, it is apparent that the Union stepped up its flood of information requests in September 2011. Over a 6-day period between September 23, 2011, and September 29, 2011, the Union submitted approximately 272 information requests. In the 11-day period between October 6 and October 17, 2011, the Union sent Respondent approximately 353 requests for information. In the 13 days between November 3, and

November 16, 2011, the Union submitted 210 requests for information. Thus, for the period of time between September 23 and November 16, 2011, the Union sent approximately 821 requests for information. For the most part, these were not initial requests, but were duplicative requests for information that had already been requested. The consolidated complaint reflects that the Union followed up by submitting initial or duplicates requests for information during December, 2011; the month before the Union filed its first charge. The Union also submitted requests for information in January, February, and March 2012. In December 2011, and the month prior to the filing of the first charge in this matter, the Union made 122 requests for information. The Union submitted 159 requests in January 2012 and 80 requests in February 2012. In March 2012, and the month prior to filing the third charge in this case, the Union submitted 100 requests for information. Although the duplicative or repeated requests were primarily made through emails that simply listed the grievance numbers and the dates of previous requests, they nevertheless constituted separate and distinct requests for information and are pled as individual requests for information in the consolidated complaint.

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F. Summary and Conclusions

Respondent relies on a number of factors in its assertion that the Union acted in bad faith by making the information requests in issue. Respondent argues that the Union improperly uses the information request process as an offensive weapon to force concessions on bargaining issues the Union was unable to obtain through the collective bargaining process. Respondent also argues that the Union uses the information request process to force Respondent to settle every grievance in its favor regardless of the merit. Respondent contends that when Respondent does not capitulate, the Union inundates it with overly broad information requests.

In support of its argument that the Union manipulates through the information request process, Respondent cites the circumstances involved in connection with grievance 10088 and referenced in complaint paragraph 283. This grievance was initially filed on April 3, 2009, by Travell Hughes alleging that he was sent home for wearing the wrong shoes. Although the grievance was unresolved at the local hearing on April 3, 2009, the grievance was not sent to Len Hughes until August 5, 2009. Len Hughes did not, however, submit a request for information until August 31, 2011; 2 years later. The Union requested the payroll history for Travell Hughes for the week ending April 4, 2009 and the "Employee Record (Attendance and Talk-Withs) for calendar years 2009 and 2010." During his testimony, Len Hughes admitted that the requested payroll history was not relevant to what shoes Travell Hughes was wearing. Len Hughes also testified that he requested the employee record for Travell Hughes to determine whether Respondent had previously counseled Travell Hughes for wearing improper shoes. Respondent asserts that the employee's 2010 record is meaningless when the grievance arose in 2009.

Although the circumstances surrounding the request for information described above does not establish that the Union's requests were made for harassment and totally in bad faith, this example certainly depicts the spirit of some of the Union's requests. It demonstrates that the requests were often untimely and the requested documents were arguably not useful or

even relevant to the issue of the grievance. In reviewing all of the requests included in the consolidated complaint, I must question what held the most significance for the Union; the requested information or the "requests" for the information.

As I discussed with the parties prior to the hearing, my role as a judge is a narrow one. I can only determine whether Respondent unlawfully failed and refused to furnish information or unreasonably delayed in furnishing requested information. I have done that for each of the 533 complaint paragraphs. My decision, however, cannot direct a remedy that will resolve the underlying problems and the clearly dysfunctional working relationship that exists between these parties. Despite Respondent's arguments concerning the Union's motivation behind these requests, I cannot conclude that all of these requests were generally made in bad faith or solely for purposes of harassment. The timing, the duplicity of requests, and the overly broad nature of many of these requests, however, support a finding that there are issues at hand that are totally separate and unrelated to the Union's interest in obtaining the requested information. Because these parties have had a working relationship for a significant period of time, they are the only ones who know how to fashion a remedy that will resolve the fundamental problems that have brought the parties to this point. No judicial or administrative body can do that for them. I step out of my role as a finder of fact to urge the parties to work together to find a resolution for these underlying issues.

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Conclusions of Law

1. Respondent, United Parcel Service, Inc., is an employer within the meaning of Section 2(6) and (7) of the Act.

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- 2. Respondent violated Section 8(a)(5) of the Act by failing and refusing to furnish information to Teamsters Local Union No. 480, affiliated with International Brotherhood of Teamsters.
- 30 3. Respondent violated Section 8(a)(5) of the Act by unreasonably delaying in furnishing information to Teamsters Local Union No. 480, affiliated with International Brotherhood of Teamsters.

REMEDY

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Having found that the Respondent has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

40 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:¹⁷

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If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, United Parcel Service, Inc., its officers, agents, successors, and assigns, shall:

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1. Cease and desist from:

- (a) Refusing to bargain collectively with Teamsters Local Union No. 480 affiliated with International Brotherhood of Teamsters, by failing to provide the Union with requested information that is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of the unit employees.
- (b) Refusing to bargain collectively with Teamsters Local Union No. 480 affiliated with International Brotherhood of Teamsters, by unreasonably delaying in furnishing the Union with the requested information that is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of the unit employees.
 - (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise o the rights guarantee them by Section 7 of the Act.

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- 2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Provide all outstanding information that has been unlawfully withheld in accordance with the findings set forth above in this Decision.
- (b) Within 14 days after service by the Region, post at its Nashville, Tennessee facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the 30 Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places where notices are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps 35 shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other materials. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the "Respondent at any time since July 14, 40 2008.

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If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

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	(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.
5	Dated, Washington, D.C., March 4, 2013.
	Margaret G. Brakebusch
10	Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to provide Teamsters Local Union No. 480, affiliated with International Brotherhood of Teamsters request information that is relevant and necessary to the Union's role as your collective-bargaining representative.

WE WILL NOT unreasonably delay in furnishing Teamsters Local Union No. 480, affiliated with International Brotherhood of Teamsters requested information that is relevant and necessary to the Union's role as your collective bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL furnish any outstanding information that has been found to be relevant and necessary to the Union in their role as your collective bargaining representative.

	<u>UNITED PARCEL SERVICE, INC.</u> (Employer)
Dated	By
	(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representative and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's

Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

233 Peachtree Street, N.E., Harris Tower, Suite 1000, Atlanta, GA 30303-1531 (404) 331-2896, Hours: 8:00 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (205) 933-3013.